

## **EXECUTIVE NOTE**

### **THE ANCIENT MONUMENTS AND ARCHAEOLOGICAL AREAS (COMPENSATION) (SCOTLAND) REGULATIONS 2011**

#### **S.S.I. 2011/373**

1. The above instrument was made in exercise of the powers conferred by section 47(1) of the Ancient Monuments and Archaeological Areas Act 1979 (“the 1979 Act”). The Regulations are subject to the negative procedure.

#### **Policy Objectives**

2. The purpose of the instrument is to provide for the manner and the time within which claims for compensation under sections 7, 9, 9I, 9N and 46 of the 1979 Act are to be made.

3. The compensation provisions in sections 9I (re stop notices) and 9N (temporary stop notices) of the 1979 Act inserted by section 6 of the Historic Environment (Amendment) (Scotland) Act 2011 (“the 2011 Act”) are caught by section 47 of the 1979 Act which in effect provides that any claim for compensation under the Act shall be made within the time and in the manner prescribed by regulations. Currently any claims for compensation made under the terms of the 1979 Act are governed by the Ancient Monuments and Archaeological Areas (Compensation) (Scotland) Regulations 1981.

4. This instrument revokes the 1981 Regulations making fresh provision as to the time and manner of claims for compensation under the 1979 Act taking account of the changes introduced by the 2011 Act.

5. The Regulations will therefore replace the Ancient Monuments and Archaeological Areas (Compensation) (Scotland) Regulations 1981 and will apply to all claims for compensation under the 1979 Act made after 1st December 2011.

6. No provision however is made in the new instrument for a prescribed form of claim for compensation as currently exists in the 1981 Regulations. This new approach will harmonise the scheduled monument enforcement compensation process with similar powers in relation to listed buildings as set out under regulation 9 of the Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) (Scotland) Regulations 1987.

#### **Summary of each Regulation**

7. Regulation 1(1) sets out the title of the Regulations and provides that they will come into force on 1 December 2011.

8. Regulation 1(2) clarifies that any reference to “the Act” means the Ancient Monuments and Archaeological Areas Act 1979 and that references to “claim” means

a claim for compensation payable or recoverable under sections 7, 9, 9I, 9N or 46 of the Act.

9. Regulation 1(3) provides that the Regulations extend only to Scotland.
10. Regulation 2 prescribes that claims for compensation must be made within 6 months of certain specified events.
11. Regulation 3 provides that claims for compensation may be sent by electronic communication providing the criteria in regulation 3(2) are met.
12. Regulation 3(3) prescribes that any person sending a document by electronic mail agrees to the use of electronic communication for all purposes relating to the claim which are capable of being carried out electronically and that the address for the purposes of electronic mail is the address incorporated into and associated with that communication.
13. Regulation 3(4) provides that agreement under regulation 3(3) exists until that person gives notice to revoke the agreement.
14. Regulation 3(5) prescribes that a notice of withdrawal of consent to the use of electronic communication takes effect on a date specified in the notice, but not less than 7 days after the date on which the notice was given.
15. Regulation 3(6) defines references within the instrument to “address”, “document”, “electronic communication” “legible in all material respects” and “sent”.
16. Regulation 4 revokes the Ancient Monuments and Archaeological Areas (Compensation) (Scotland) Regulations 1981 (S.I. 1981/1469) but ensures these Regulations continue to apply to claims for compensation made before 1st December 2011.

## **Consultation**

17. A public consultation on the draft Regulations ran from 21 March to 14 June 2011. The draft Regulations were one of a suite of 4 draft Scottish Statutory Instruments that were subject to consultation. The consultation document was sent to 359 organisations and individuals. Twenty eight organisations responded. The responses indicated generally strong support for the draft Statutory Instruments although some respondents suggested minor technical amendments to the Regulations, while others queried how some aspects of the Scottish Statutory Instruments would work in practice as well as seeking guidance on aspects of the processes governed by the Regulations.

18. A full list of those consulted and who agreed to the release of this information is attached to the consultation Analysis Report which can be viewed here:

<http://www.historic-scotland.gov.uk/index/about/consultations/closedconsultations.htm##21>

19. Respondents include:

Eleven local authorities  
Two National Parks  
Built Environment Forum Scotland  
Institute of Historic Building Conservation  
National Trust for Scotland  
The Royal Incorporation of Architects in Scotland

20. While consultation on the draft Regulations was not required by statute the Scottish Government took the view that, in this case, and in line with the open and inclusive engagement that had characterised the legislative process underpinning the development of the 2011 Act, it was best practice to consult various interested bodies and individuals on those draft Regulations that had a significant or practical policy dimension.

### **Impact Assessments**

#### Equalities Impact Assessment

21. The Regulation's are not discriminatory on the basis of gender, race, disability, marital status, religion or sexual orientation. The public consultation on the draft Regulations noted that it was the Scottish Government's view that it was "unlikely that the Regulations would have significant equalities impacts" and invited views on the draft Regulations in that regard. The consultation document was sent to all the key equalities agencies in Scotland and none offered an alternative view on this issue. The Scottish Government is satisfied therefore that the Regulations will have no equalities impacts.

#### Strategic Environmental Assessment (SEA)

22. Historic Scotland has applied the criteria specified in Schedule 2 of the Environmental Assessment (Scotland) 2005 Act to the proposed Regulations and have determined that they are exempt from Strategic Environmental Assessment under Section 7(1). A copy of the Agency's determination can be viewed via the Scottish Government's SEA database at the following website:

[www.scotland.gov.uk/Topics/Environment/SustainableDevelopment/14587/SEAG](http://www.scotland.gov.uk/Topics/Environment/SustainableDevelopment/14587/SEAG)

### **Financial Effects**

23. The Cabinet Secretary for Culture and External Affairs confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

24. While there is clearly potential for compensation costs to arise in certain circumstances in relation to stop notices, Scottish Ministers would simply need to factor the risk of a successful compensation claim into any decision to serve a notice. The Scottish Government is satisfied that cases would only be pursued when Historic Scotland was sure of its ground and the risk of a successful claim for compensation is very low.